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File No. Village Panch II/52 (R)

Legal Dept.

B **BRANCH**

P.W.D. 1952

Subject:— Rules under the Bombay Village Panchayat Act, 1933

File No. Village Pancha II/52(R)

Gen. 194 a.

132-B

Legal Department.

Two revised draft notifications are sent herewith.

2. It is necessary to amend rule 2(4) of the Bombay Village Panchayats Election Rules so as to bring it in line with the provisions of the Bombay Village Panchayats Act, 1933, as amended by Bom. XVII of 1950. Since no rules appear to have been made so far under section 168(1)(b) of the Said Act, reference to these rules in the existing rule 2(4) also requires to be deleted The first draft notification accordingly provides for the substitution of a new rule 2(4) for the existing one.

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D., No. 2470, Dated the 15th February, 1952.

SSM / 2/7/561

Legal Department.

Draft rule 18A sent by the Local Self Govt. & Public Healt' Department for A.L.A.'s scrutiny is not in order. The proposed draft rule provides for appointment of a part time secretary with the previous sanction of the Director of Local Authorities and also provides for his remuneration as may be sanctioned by the Director of Local Authorities. No power has been given under the Bombay Village Panchayats Act, 1933, to the Director of Local Authorities to sanction the appointment of a part time secretary or to sanctic his remuneration. It would be, therefore, necessary to omit the reference to the Director of Local Authorities in the matter of appointment of a part time secretary and the payment of remuneration to him.

2. Under sub-section (1A) of section 33 of the Act, power has been given to Government to prescribe the qualifications, powers, duties, remuneration and conditions of service (including disciplinary matters of the secretary to be appointed by the Panchayat. In view of this provision, rules have already been framed by the Government called the Bombay Village Panchayat Secretary (Conditions of Service) Rules, 1948. These rules have laid down the qualifications of a Panchayat's Secretary and have also prescribed the remuneration to be paid to him and other conditi of service. All these provisions are, however, in respect of a full time Secretary. Since the intention now is to appoint also a part time Secreta it would be necessary for the department to consider the qualifications which such Secretary should possess, the conditions of service which should govern him and the emuneration which should be paid to him. Separate provisions for all these matters will have to be made by the department. The department, therefore, is requested to draft

to draft appropriate rules concerning these matters and then send them to Legal Department for scrutiny.

Additionnll Secretary to Government.

U.R. to L.S.G. & P.H.D. No. 3290 Dated, 28th Feb., 1952.

SSM / 2/7/56.

Legal Department.

The question raised for consideration is whether the Bombay Village Panchayats Secretaries (Conditions of service) Rules, 1948, can be amended so as to provide that the first appointment to the post of a Secretary of a village Panchayat should be made by the District Local Board, subject to the confirmation by the village panchayat.

2. The scope of making rules under section 108(1)(el) read with section 33(1A) of the Bombay Village Panchayats Act, 1933, under which the Rules referred to above are made, is limited to prescribing the qualifications, powers, duties, remuneration and conditions of service including disciplinary matters of the Secretary of a panchayat. Under these powers, the manner of appointment of the Secretary cannot be prescribed. In this behalf, section 33(1) of the Act vests absolutely the power of appointment of a Secretary in the panchayat. No rule can be made to affect these powers of the panchayat and to provide that the first appointment may be made by the District Local Board even if such appointment is made subject to confirmation by the panchayat.

Additional Deputy Secretary to
Government.

U.R. to L.S.G. & P.H.D. No. 8975 Dated, 29th May 1952.

Legal Department.

A revised draft notification is sent herewith.

2. It is not desirable nor necessary to specify the examinations which are at present recognised as equivalent to the Primary School Certificate Examination as any changes made in these examinations would every time require amendment in the Panchayats Secretaries Rules. The revised draft would servethe prupose and would not require such amendments. Under the amenement, the Department may by executive orders give recognition from time to time to such examinations as it deems fit.

Additional Deputy Secretary to Government.

U.R. to L.S.G. & P.F.D. No. 9849, Dated the 12th June, 1952.

SSM / 2/7/56.

Legal Department.

It is proposed t insert a new rule 21A to provide for the Travelling and Daily Allowances of a Secretary of a Village Panchayat to a place outside the limits of such Panchayat. Under the existing rule 17(4) a ----- selected candidate, a probationer as also a Secretary is entitled to draw such allowances at such rates as may be prescribed under the rules framed by the Dristrict Local Board for its own servants. The Department in its note on page 27 has referred to the District Local Board Travelling Allowance Ruled, 1936. Obviously these Rules relate to the Travelling Allowance payable to the --- Members of the Board and not with respect to the --- servants of the District Local Board. Section 123 of the Bombay Local Boards Act empowers a Board to frame Regulations for the matters specifiedin that section. But it does not appear that even that section empowers the Board to make Regulations for thepayment of Travelling or Daily Allowance to its servants. That being so, the Local Self Government and Public Health Department is requested to consider whether the present rule 17(4) of the Bombay Village Panchayats Secretaries (Conditions of Service) Rules, 1948, may not be suitably amended.

2. Mor over, the proposed rule provides for Travelling Allowance to a Secretary alone. The Department is therefore requested to c nsider whether the rule may not provide for such Travelling Allownance and Daily Allowance to selected candidates and probationers also. The Department is requested to recognsider the proposed amendment in the light of the above remarks and state whether rule 17(4) may be suitably amended to provide for all the matters in view and then send a fresh draft for the consideration of the R.L.A., if necessary.

Legal Department.

The proposed levy of octroi on tobacco is legally in order. A revised draft notification in place of the draft on page 25 ante is sent herewith.

Additional Secretary to Government.

U.R. to L.S., C. & P.H.D., No. 19886B Dated the 27th Nov., 1952.

SSR / 2/7/56.

Legal Department.

It is pointed out by Local Self Government and Public Health Department that even though rule 3(3) rule 8(2) and rule 8(3) of the Bombay Village Panchayats Election Rules, 1948, provide for giving of notices thereunder no forms of such notices have been prescribed and the proposal, therefore, is to prescribe such forms in the rules.

2. In order to have uniformity it is desirable that notices to be given thereunder should be as far as possible in the same language. It is not, however, desirable that such forms should be prescribed under the rules. If they are prescribed under the rules, they will have to be rigidly followed and any departure therefrom will lead to the challenging of the election for not following the procedure properly The proper thing would be to prescribe such forms by executive orders. The following further observations are made with regard to the forms at pages 45 to 59 ante:-

(1) Notice at page 45 under rule 3(3). The form of notice in terms of sub-rule (3) of rule 3 may be prescribed by an executive order but from the draft notice at page 45 it appears that the notice purports to have been given by a Mamlatdar or a Mahalkari. Rule 3(3) requires that such notice must be under the signature of the Collector or special officer appointed under rule 2(7) by the State Government. The signatureof such office therefore must appear under thenotice. From rule 3(3) it will further appear that the power to appoint other public places at which the notice is to be a fixed must be exercised by the Collector or the special officer as aforesaid. Thereverse side of the notice must, therefore bear the signature of the Collector or special officer.

(2) Form No. 2 at page 47. This is not a statutonotice. It may, however, have to be given by the Collector or special officer for the reasons stated in the previous para.

(3) Form of notice at page 49 under rule 8(2). A notice in terms of rule 8(2) may be prescribed by executive orde . The provisions of sub-rule (2) of rule 8 also require that such notice is to be given by the Collecot or special officer appointed under rule 2(7) of the rules. The communication which appears at the end of the notice should also be in the name of the Collector or special officer because the power to appoint other public places is to be exercised by the Collector or he special officer, as he case may be.

(4) Notice No. 5 under rule 8(3) at page 51. The form ofnotice may be prescribed by executive order in terms of the provisions of rule 8(3).

(5) Notice No. 7 at page 53 under rule 13. This notice also should be prescribed by executive order. It should not state any thing beyond the names of the candidates validly nominated arranged in the alphabetical order. The heading of the notice should be "A list of all validly nominated candidates".

(6) Form of notice No. 6 under rule 18 at page 56 There is no objection to pasting the voting paper at the places mentioned in the notice.

(7) Draft Notice No. 7 at page 57 ante.

This notice should be separately given under rule 14 and 29 respectively to avoid any confusion. The rules provide for the publication and namds under different circumstances. The names of persons elected where the election is uncontested are to be declared under that rule by the Returning Officer; whereas under rule 29(a) the names of all candidates are to be posted at the village Chavadi or at the village panchayat office or at such public place appointed in that behalf. In fact under rule 14 no notice is required. What is required is that the declaration is to be made by the Returning Officer about the candidates who have been elected without any contest. There is no objection, however to pr scribe a form by executive order in which such declaration should be made.

(8) Notice No. 8 at page 59. The form of notice may be prescribed by executive order and it should be published by the Collector or by a special orricer appointed under rule 2(7) of the rules. The endorsement below the notice should also appear under the name of the Collector or special officer.

Additional Secretary to Government.

U.R. to L.S.G. & P.W.D. No. 18523/B , Dated the 7th November, 1952.

Legal Department.

In place of the draft notification at page 101 ante, a revised draft notification is sent herewith.

New draft rule 26:- The draft rule has been further revised from the drafting point of view.

New draft rule 27:- It is proposed to lay down by the last sentence in the Department's draft at p. 102 that the additional cost arising out of suspension shall be borne by the village panchayat. Such a rule will be ultra vires as it conflicts with section 33(2) of the Bombay Village Panchayats Act, 1933, which expressly lays down that the State Govt. shall pay three fourths of the salary and allowances of such Secretary. This sentence has, therefore, been deleted in the revised draft.

New draft rule 28:- In the last sentence in the Department's draft, it is proposed to lay down a different proportion in which cost should be borne by Government and the village panchayat. For the reasons stated above, the proportion laid down by the Act cannot be changed by means of a rule. The last sentence in the Department's draft has, therefore, been deleted in the revised draft.

2. As the revised draft notification sent herewith is not materially different from the draft notification already published, it is not necessary to publish the revised draft for inviting objections. Revised draft rule 27 is more liberal than the draft rule already published. Revised draft rules may, therefore, be finally published.

Additional Secretary to Government.

U.R. to L.S.G. & P.W.D., No. 18700/B Dated the 10th November 1952.